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Date: 13 January 2025

Our ref: 50303/24/HS/AW/33353485v2

Your ref: 20049353 Anglo American

Dear Rammiel

H2 Teesside Examination: Deadline 6 Submission

We write on behalf of our client, Anglo American Woodsmith (Teesside) Limited; Anglo American Woodsmith Limited; and Anglo American Crop Nutrients Limited (collectively 'Anglo American'), registered as an Interested Party for the H2 Teesside DCO Examination (20049353).

For submission at Deadline 6, Anglo American is submitting comments on responses to the Examining Authority's Second Written Questions and requests for information (PD-015), which were published following Deadline 5 (18th December 2024).

Examination

At Deadline 5 Anglo American submitted responses to the Examining Authority's Second Written Questions, requested participation at the Hearings during the week commencing 13th January, and provided an update on engagement and negotiations with the Applicant (REP5-069). This included the submission of Anglo American's preferred Protective Provisions, as invited under the Examining Authority's Question 2.9.12 (PD-015).

Anglo American continues to be in regular contact with the Applicant and as stated at Deadline 5, welcomes this increased engagement. Prior to Deadline 5, Anglo American submitted to the Applicant suggested amendments to draft Protective Agreements and Side Agreement. The Applicant's version of the Protective Provisions were included in the draft DCO submitted at Deadline 5 (REP5-006) which do not include essential protections required by Anglo American and included in the Anglo American draft Protective Provisions.

Comments on the status of agreements and adequacy of the Protective Provisions will be made during the Hearings, and this written submission addresses responses to the Examining Authority's Second Written Questions only. The status of negotiations is however essential context for the below comments.

Anglo American is yet to receive any response from the Applicant on the on the draft Side Agreement that was sent to it on 4th December 2024. Nor has there been any response from the Applicant as

regards the draft Protective Provisions which were sent to the Applicant on 12th December 2024 other than, as noted above, those included in the dDCO at Deadline 5 which do not include the essential protections requested in the Anglo American draft. In the absence of substantive progress on these documents, the H2 Teesside DCO continues to represent a threat to the deliverability of Anglo American's consented Woodsmith Project, namely the York Potash DCO. Until there is agreement in respect of the two documents, Anglo American maintains its objections to the H2 Teesside DCO.

Examining Authority's Second Written Questions

Anglo American has reviewed the Applicant's responses to Examining Authority's Second Written Questions (PD-015) (ExAQ2). Comments on these responses are included below.

Above Ground Infrastructure at Bran Sands (Q2.1.10, Q2.6.16)

As requested by the Examining Authority at Q2.1.10, the Applicant has provided updated Integrated Works Plans (REP5-039, Appendix 4). This includes an indicative location for pipelines on Sheet 7. However, design and engineering detail at this location is yet to be confirmed. This uncertainty creates potential conflict with the proposed implementation of the York Potash DCO, and until this is directly addressed, Anglo American has no option other than to maintain its objection. It is hoped that project interfaces could be satisfactorily addressed within a Side Agreement but as above, in the absence of any such document, the objection must be maintained. The drafting provided by Anglo American in the draft Side Agreement dated 4th December includes provision for the interface of the respective projects on this issue.

At Q2.6.16 the Examining Authority requested that further details were provided by the Applicant to confirm the process for design development in the context of reducing land requirements at this location.

Anglo American acknowledges the Applicant's response (REP5-044) which maintains that land requirements are based on ongoing requirements for flexibility due to the preliminary stage of design. The Applicant has confirmed that the final location of shafts will be determined following surveys for locations of existing services, ground conditions, and requirements for suitable offset distances. The shaft area has been estimated as 15m x 15m. The extent of land required for the River Tees crossing location will be maintained to allow for flexibility. Again, this approach, whilst desirable to the Applicant, creates considerable uncertainty for Anglo American as the extent of the proposed limits is potentially detrimental to the implementation of the Woodsmith Project. Until this is addressed and the interfaces between the two projects can be successfully managed without prejudice to the delivery of the York Potash DCO, the current objection is maintained.

Anglo American also acknowledges the Applicant's response to Q2.14.8 regarding the dredge pocket at the Tees crossing location (REP-5-048). The Applicant has stated that the crossing will be located below the riverbed and will not present interference. Whilst Anglo American acknowledges that this is the likely design outcome, it has not been given any contractual assurances of the case, and necessarily maintains its objection to protect its interests and the deliverability of the Woodsmith Project.

The Applicant's response to these questions illustrates limited design development of the H2 Teesside project and specifically, limited design development at the interface with the Woodsmith Project which

presents ongoing difficulties for securing agreements to manage this interface. Engagement is ongoing, and it is acknowledged that there is potential for a Side Agreement to give greater certainty on project development and subsequent interface with the York Potash DCO. However, in the absence of such a document, Anglo American must maintain its objection to the proposed infrastructure at this area which is potentially incompatible with the deliverability of the York Potash DCO.

Road Access

At Q2.6.9 the Examining Authority requested confirmation from the Applicant on requirements for temporary road closures during construction. The Applicant's response emphasised that the restriction on existing rights will be avoided where possible, but it is not yet possible to identify specific details regarding temporary closures (REP5-044). The full response is included at **Annex 2**.

Anglo American necessarily maintains an objection to proposed road closures which suspend access to land required for construction and operation of the York Potash DCO. Potential agreement on this issue is subject to provisions within a Side Agreement, which as above remains outstanding, necessitating the retention of the objection at this time.

Ongoing Engagement

The Applicant has reiterated in response to Q2.9.6 that requirements for ongoing engagement between Anglo American and the Applicant will be managed through arrangements in the Protective Provisions (REP5-045). This removes the requirement for Anglo American's inclusion in the Local Liaison Group. Anglo American agrees to this approach.

Operational Noise Requirement

Following from previous representations on this issue, Anglo American welcomes the Examining Authority's request at Q2.9.9 that the Applicant provide a draft Requirement for the management of Operational Noise.

The Applicant has provided a draft Requirement but maintains in its response that as the Environmental Statement found daytime noise impacts to be negligible, no Requirement is necessary (REP5-045).

Anglo American has reviewed the draft Requirement and maintains that it should be included in the DCO. Anglo American remains concerned that given the limited design development at this time, there must be uncertainty regarding achieving predicted noise levels, and that as a consequence, the obligation on the Applicant to submit and secure approval of a management and monitoring scheme, included within this Requirement is necessary.

Concluding Remarks

This submission includes Anglo American's comments on responses to the Examining Authority's Second Written Questions. In the continued absence of sufficient detail of the proposed scheme Anglo American maintains its concerns, noting the potential for the project to prejudice the deliverability of the consented York Potash DCO. Comments on the status of negotiations and Protective Provisions will

be made during Hearings to commence on 13th January 2025. Additional comments on materials submitted at Deadline 5 will be made at Deadline 7.

As the Examination reaches its final stages, Anglo American looks forward to continued engagement with the Applicant to reach agreement.

Yours faithfully

[REDACTED]
[REDACTED]
Senior Director
BA (Hons) MPhil MRTPI

Annex 1: Q2.6.16 - Shaft and Tees Crossing Location

REP5-044: 8.25.6 Response to ExQ2.6 Compulsory Acquisition and Temporary Possession - Clean

Q2.6.16

A1.1 The above question relates to the holistic approach to land requirements following detailed design. Please give further details specifically in regard to the crossing of the River Tees and how the ExA can be satisfied that only the land required is being sought and how this will be reduced following detailed design and ground investigation.

Applicant's Response:

A1.2 The current extent of the DCO Order limits for the River Tees crossing is informed by the preliminary (pre-FEED) crossing design. The area of land outlined for siting the Tees crossing shaft at each side of the river reflects the design maturity of the preliminary design. The plots and Order limits shown in the Land Plans [CR1-004] would allow for flexibility in detailed design of the crossing. The final location of the shafts is influenced by a number of factors and can be confirmed following:

- Non-intrusive surveys to determine presence and locations of buried underground services. This is planned to take place in 1Q 2025.
- Determination of suitable offset distances from existing infrastructure including existing buried pipelines (via FEED design and stakeholder engagement).

Validation of ground condition at the shaft sites.

A1.3 Completion of detailed design of the River Tees crossing is to be performed as a competitive design process by two specialist crossing engineering and construction companies with specific Microtunnel experience (including construction). Both FEED subcontractors will be provided with the DCO Order limits in order to allow freedom and flexibility in design to allow for company and technology consideration with respect to:

- Shaft dimensions – Required depth and diameter
- Required construction compound and associated laydown areas for materials
- Construction methodology and associated spatial constraints

A1.4 Following completion of the detailed design process, the required shaft locations will be determined and the permanent infrastructure land requirements can be finalised, to match the area associated with the permanent shaft infrastructure. This is expected to be approximately 15 m x 15 m but will be confirmed post detailed design. The tunnel crossings, i.e. connection of the two shafts, can be confirmed following determination of final shaft locations

Annex 2: Q2.6.9 – Roads and Access

REP5-044: 8.25.6 Response to ExQ2.6 Compulsory Acquisition and Temporary Possession – Clean

Q2.6.9

A1.5 In response to ExQ1 [REP2-024] Q1.6.63, the Applicant stated that it is not anticipated to permanently extinguish existing rights over access roads, private roads or other rights of way and where new rights are being sought over such roads these are anticipated to co-exist with existing rights. The Applicants reply to ExQ1 Q1.6.9 goes on to state that they are committed to suspending rights only during construction and will remain for only as long as the Applicant is in possession of the land. Please advise if it is anticipated to temporarily close and deny access without alternatives along any road (whether private or public), access track or other means of access that are required by other parties to access and operate any part of their land or operation.

Applicant's Response:

- A1.6 At this stage of the project, the Applicant is still in the early design phases, and it is too early to identify specific details regarding temporary closures or their potential impacts. However, the Applicant can confirm that there is no plan or intention to significantly alter or prolong restriction of existing access rights along any road, access track, or other means of access required by other parties.
- A1.7 That said, there may be situations during construction where critical activities, such as lifting operations, require temporary closures to ensure safety. In such cases, closures will be carefully planned and timed to minimize disruption, and the Applicant will seek to provide alternatives.
- A1.8 The Applicant remains committed to minimising impacts on access and ensuring that affected parties are informed well in advance to mitigate any inconvenience.

Annex 3: Q2.9.9 – Operational Noise Requirement

REP5-045: 8.25.7 Response to ExQ2.9 Draft Development Consent Orders

Q2.9.9

A1.9 Schedule 2, Requirements - Control of Noise – Operations

The Applicant's responses regarding 'missing requirements' when comparing the Requirements in the NZT DCO and the Applicant's proposed draft DCO, as set out in the Applicant's 'Summary of Applicant's Oral Submissions at ISH2' [REP4-016] are noted. However, the ExA notes that Anglo American in Annex 2 of its Oral submissions made at ISH2, also submitted at DL4 [REP4-031] maintains that an additional requirement in respect of Control of noise - operation should be contained within Schedule 2 of the dDCO.

A1.10 6.9 Anglo American considers that such a Requirement should be included to the effect that the authorised works should not be brought into use until such time as a scheme for management and mitigation of noise during operation is consistent with principles of the Environmental Statement. It argues that such a Requirement is relevant particularly in the current absence of an assessment of the cumulative environmental effects of the Proposed Scheme taking Anglo American's operations into account.

A1.11 6.10 Whilst noting the Applicant's response, as stated above, and the use of such a Requirement in the NZT DCO, the ExA would ask the Applicant to provide, on a without prejudice basis, a form of wording for inclusion within the draft DCO for a Requirement that relates to the Control of Noise - Operations, should the ExA consider such a Requirement to be necessary.

Applicant's Response:

A1.12 6.11 The Applicant maintains that it is not necessary to include an operational noise requirement in the draft DCO (Document Ref: 4.1) as it has previously set out in the Applicant's Summary of Applicant's Oral Submissions at Issue Specific Hearing 2 [REP4-016]. This is because Chapter 11: Noise and Vibration of the Environmental Statement [PDA-007] concluded that there are no likely significant effects expected to arise during the operational phase.

A1.13 6.12 The Applicant has submitted an updated Report to inform Habitats Regulations Assessment (HRA) (Document Ref 5.10; and Document Ref 5.10A) at Deadline 5 which includes an updated cumulative and in-combination assessment. This assessment has also found that there are negligible (not significant) effects due to noise and vibration during operation.

A1.14 6.13 Finally, operational noise will be regulated by the Environment Agency through the environmental permit, so duplicate operational controls set by a requirement in the draft DCO are not required.

A1.15 6.14 However, further to the ExA's request, the Applicant has prepared the following drafting on a without prejudice basis for an operational noise requirement should the ExA consider that, notwithstanding the Applicant's position set out above, one is necessary:

6.15 Control of noise - operation

(1) No part of Work No. 1 may be brought into commercial use following commissioning until a scheme for the management and monitoring of noise during operation of those parts of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted by the undertaker under sub-paragraph (1) may be the same scheme for the management and monitoring of noise during operation submitted to the Environment Agency by the undertaker in its application for an environmental permit.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.